PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ASSIGNMENT.

Fraud

The question as to how far it is a fraud upon creditors, having a priority but staying proceedings at the request of the debtor, to make an assignment for the benefit of creditors, was discussed by the New York Supreme Court in *Bank* v. *Wheel Co.*, 73 N. Y. Supp. 114. There the creditor was on the point of securing judgment upon a note, but granted an extension upon the debtor's promise to secure him in his priority; and the court held that the assignment, under those conditions, was fraudulent. McLennan, J. dissented on the ground that the defendants had only done their duty after insolvency.

BANKRUPTCY.

Membership in Stock Exchange, Expulsion

The constitution of the St. Louis Stock Exchange provides that if a member is expelled, his seat shall be disposed of by the Committee on Admission. Nothing is said as to forfeiture, although in other contingencies such as death, the proceeds are to be applied to the payment of debts, and the residue is to be handed over to the estate. The court in *In re Gaylord*, 111 Fed. R. 717, held the seat of an expelled member was an asset in the hands of the trustee. This appears to be contrary to *Belton* v. *Hatch*, 109 N. Y. 593.

Watch as Implement of Trade

It was held by Lowell, J. in *In re Coller*, 111 Fed. R. 503, that where a person needed a watch to keep an account of his time at work, while away from the factory, his watch was exempt; but that he was only entitled to a watch that will answer his purpose; and he directed that the trustee might take the bankrupt's watch provided he gave him $10 to buy another.

CARRIERS.

In the case of *Ullman* v. *Chicago, etc., Ry. Co.,* 88 N. W. 41, the Supreme Court of Wisconsin held that where a carrier has printed in its bill of lading a clause stating that its liability shall be limited to the valuation declared by the shipper and shall in no event exceed a certain figure, such a contract is not an arbitrary stipulation against liability for negligence, but a valuation agreed upon between the shipper and the carrier. The court agrees that no common carrier can by contract free itself from all liability. The leading case upon this point is *Hart* v. *R. R. Co.,* 121 U. S. 351. The decision in this case is contrary to that in *R. R.* v. *Owens,* (Ky.) 19 S. W. 590.

Limiting Liability, Valuation of Shipment

During the summer of 1901, the D. L. & W. R. Co. sold tickets to the Pan-American Exposition at a special rate, in consideration of the purchaser agreeing not to transfer it. In *R. R.* v. *Frank,* 110 Fed. 689, the railroad company sought to enjoin the defendants who were ticket-scalpers from handling the tickets. The defence was that the plaintiff could not deprive a purchaser of his property in the ticket, which included the right to sell, but Hazen, J. held that an injunction would lie. However, as the plaintiff was a party to a pooling combination in violation of the Anti-Trust Law, it was held not to be entitled to any equitable relief. For a discussion of the question of a railroad's duty to a transferee of a special ticket, see *Mosher* v. *Rwy. Co,* 127 U. S. 390.

Special Tickets, Transfer Prohibited

A. purchased tickets, good for passage, berths and meals upon a steamship of the B. Co., for himself and family. When he came aboard he found the boat crowded, and was unable to secure berths. The officials at last arranged to furnish his wife with a berth, provided he would sleep upon a mattress. During the night he contracted a severe cold, which developed into pneumonia, causing his death. In *Van Anda* v. *Navigation Co.,* 111 Fed. R. 765, the widow was refused any recovery for his death and the company exonerated because of the large number of travelers at that season of the year.

Insufficient Accommodations, Action for Death

CONDITIONAL SALE.

Bankruptcy, Validity of Lien

In the case of *In re Sewell,* 111 Fed. R. 791, the A. Co. had sold a cash register to B. under an agreement whereby the title remained in the A. Co. until final payment. This amounts, under the Kentucky law, to a chattel mortgage, which, while unrecorded, creates no lien as against a subsequent creditor, but is valid as to antecedent creditors. Where B. had gone into bankruptcy, the court held that the A. Co.'s lien was not discharged, although the creditors were all subsequent creditors; for, as the court says, the transfer of the property to the trustee is for the benefit of all creditors; and if there were antecedent creditors, as they could not take, so neither could the subsequent creditors. The court refuses to make any distinction, because in this case there happen to be no antecedent creditors.

CONSPIRACY.

Procuring Another's Discharge

The plaintiff in *Baker* v. *Sun Ins. Co.,* 64 S. W. 967, attempted to recover damages for the unlawful act of the defendant in securing his discharge by a third company. The Kentucky Court of Appeals adopted the rule laid down in *Bourlier* v. *Macauley,* 91 Ky. 135, that a party to a contract cannot maintain an action against a person who has maliciously advised and procured another party to break it, unless the party procuring the breaking of the contract did so by coercion or deception, and thus caused the party to break the contract against his will or contrary to his purpose.

CONSTITUTIONAL LAW.

Limiting Charges by Stockyards

The statute passed by the Kansas Legislature, March 3, 1897, declares that all stockyards receiving more than one hundred head of cattle per day, shall be public stockyards; and then proceeds to lay down a maximum rate to be charged by public stockyard owners for keeping cattle. The stockyards at Kansas City are the only ones doing sufficient business to come under this classification. In *Cutting* v. *Goddard,* 22 Sup. Ct. R. 30, the U. S. Supreme Court decided that there was no good basis for the classification here—that success in building up a large business should not make a

CONSTITUTIONAL LAW (Continued).

company a "legitimate object of the legislative scalping knife." The court accordingly held it in conflict with the Fourteenth Amendment of the Constitution, guaranteeing the equal protection of the laws.

Carriers, Long and Short Haul

The Legislature of Kentucky has passed a statute, imposing a penalty upon any common carrier charging more for a short than a long haul, by which the railroad commission hears all complaints and alone has the right to present an information to the grand jury, it being in the power of the commission to exonerate. In *Ill. C. R. R.* v. *Common.,* 64 S. W. 975, this statute was attacked as a violation of the clause in the Federal Constitution, securing to every citizen due process of law. But the court holds that this provision does not extend to matters which at common law were not of judicial cognizance so as to require them to be tried now by the courts. *Weimer* v. *Bunbury,* 30 Mich. 201. Three judges dissent.

CONTEMPT OF COURT.

Conspiracy to Defeat Injunction

In the case of *Conkey* v. *Russell, et al.,* 111 Fed. R. 417, the U. S. Circuit Court for the District of Indiana, had presented to it the question whether it could punish, for contempt of its injunction, a party who had not been a defendant to the bill, but had with actual knowledge of the court's decree conspired to defeat it. The court had enjoined striking typesetters from interfering with workmen in the employ of the Conkey Co., and the party, cited for contempt, had been sent to the factory by a Chicago Union to carry on the intimidation. He was guilty of contempt. There was the further objection made that he was a resident of the same state as the plaintiff and, therefore, the Circuit Court had no jurisdiction. The court overruled it upon the authority of *In re Lennon,* 166 U. S. 548.

CONTRACTS.

Railroads, Exclusive Use of Switch

The Kentucky Court of Appeals had the following state of facts to deal with in *R. R.* v. *Coal Co.,* 64 S. W. 969. The railroad had a switch running along an unopened street, and, at one point, going over the land of B. The latter granted the right of way upon condition that the railroad company would

CONTRACTS (Continued).

not haul coal from any other coal company over that switch. The court held that this was granting a monopoly to B.—that since the railroad company could condemn the right of way, it had no right to enter into such a contract for it—and gave the plaintiff, below, a mandatory injunction compelling the defendant to furnish cars. The court relies upon *Hays* v. *Pennsylvania Co.,* 12 Fed. 309.

Discharge in Bankruptcy, Revival of Debt

The question arose, in the case of *Smith* v. *Stanchfield,* 87 N. W. 917, as to what kind of a promise was sufficient to revive a debt that had been discharged in bankruptcy. The action was upon a promissory note given prior to the bankruptcy, and which it was alleged the defendant had since verbally agreed to pay. The Supreme Court of Minnesota held that an oral promise was all that was necessary to revive the debt; but the defendant was given judgment on account of the insufficiency of the evidence. This case agrees with *Elwell* v. *Cumner,* 136 Mass. 102.

CORPORATIONS.

Insolvency, Right to Prefer Directors

The A. Co. had four unsecured creditors. It having become embarrassed, three of these creditors, through an agreement with the holders of the common stock of the A. Co. secured the election of directors, favorable to their interests. The business was continued for several years, without any objection upon the part of the other unsecured creditor. During this time, the three creditors in control made further advances to tide the company over; but finally—the company's condition becoming hopeless—their representatives upon the board of directors executed a deed of trust with a preference for the three creditors. The Circuit Court of Appeals, in *Amer. Exchange Bank* v. *Ward,* 111 Fed. 782, held these preferences valid, although they were treated as preferences made by the directors in their own favor, in the absence of any evidence to show that the beneficiaries' claims were not bona fide. The court rejects the idea that the assets of the company become a trust fund upon its insolvency, and the hard point in the case was as to preference by directors in their own favor. They decide that such a

CORPORATIONS (Continued).

preference is good, in the absence of fraud, whether the debt be present or precedent. An instructive discussion of this question is to be found in *Sanford Tool Co.* v. *Howe,* 157 U. S. 312.

Rights of Minority Stockholders

A very interesting case of "freezing out" minority stockholders is shown in *Mumford* v. *Ecuador Development Co.,* 111 Fed. R. 639, where the majority stockholders of a prosperous corporation transferred their stock to a third company and the latter proceeded to vote to itself, through the directors it elected, all the former corporation's valuable contracts and assets. The Circuit Court for the Southern District of New York held these facts warranted equitable relief in favor of the minority stockholders. See the case of *Menier* v. *Telegraph Works,* 9 Chanc. App. 350.

Certificate, Taking out of State

The president of a Delaware corporation was indicted in a New York Court for perjury in swearing to the certificate of incorporation; and, to refresh a witness' memory, application was made to the Secretary of State of Delaware to allow the original certificate to be taken to New York. The Delaware Court of Chancery enjoined the Secretary in the case of *Delaware Surety Co.* v. *Layton,* 50 Atl. R. 378, from acceding to the application.

Jurisdiction, Appointment of Receiver

The plaintiff in *Hallenberg* v. *Green,* 73 N. Y. Supp. 406, petitioned for a receiver of an Arizona corporation on the ground of fraud. The Supreme Court refused the application because they had no control in such a matter over a foreign corporation. This is in accord with *Madden* v. *Electric Co.,* 199 Pa. 454 (1901). The court did, nevertheless, decide that it had jurisdiction over a fund, belonging to the corporation and deposited with a trust company within the State of New York. The court held they had power to appoint a receiver; that the fund would not pass into the hands of the receiver appointed by the Arizona Court; and that the New York receiver would only be bound to pay it over when the Arizona court had made final distribution of the company's assets. Van Brunt, P. J. dissents.

CORPORATIONS (Continued).

Ultra Vires, Pledge of Credit

A partnership was heavily indebted to a corporation, and the only chance the creditor had to be paid was in case the debtor could continue in business. To that end, the corporation became surety upon a promissory note, but it now seeks to avoid its liability upon the ground that such pledge of credit was *ultra vires*. The New York Supreme Court in *Heas* v. *Sloane*, 73 N. Y. Supp. 313, held this act was among the implied powers of the corporation. They rely upon *Koehler* v. *Reinheimer*, 26 App. Div. 1. One judge dissents.

DAMAGES.

Seeds, Implied Warranty

Where cabbage seed had been sold and turned out worthless, the following rule, for ascertaining the damages, was laid down by the New York Supreme Court in *Landreth* v. *Wyckoff*, 73 N. Y. Supp. 388: "the value of a crop, such as the jury should believe would ordinarily have been produced that year, deducting all expenses of raising the crop, and also deducting the value of the crop actually raised." The other view of this question is taken in *Ferris* v. *Comstock*, 33 Conn. 513, where the expected profits were held to be too speculative and the plaintiff was limited to the cost of the seed and the labor in cultivating it, less the benefit done to the ground by the crop.

EJECTMENT.

Landlord, Mortgagee in Possession

The Supreme Court of New York, in which state a mortgage is regarded as a lien, conferring no legal title upon the holder, dealt with an interesting point upon that subject in *Barson* v. *Mulligan*, 73 N. Y. Supp. 262. The defendant was lessee under a life tenant, whose term had expired, and also holder of a first mortgage upon the leased premises. The plaintiffs had leased the disputed property to a third party and, during the continuance of this lease, brought ejectment. The court unanimously held that this lease did not bar the plaintiff's action of ejectment; but, upon the point of the rights of a mortgagee in possession, the court disagreed—the majority holding that while a mortgagee out of possession cannot maintain ejectment, one lawfully in possession can defend in such a suit. They rely upon *Madison Ave. Church* v. *Oliver St. Church*, 73 N. Y. 94.

EMINENT DOMAIN.

Constitutional Law, Legislative Powers

The legislature of Minnesota, in a statute, providing for the establishment of a uniform height at which waters in navigable lakes should be maintained, gave the district courts the power, after hearing the facts in the case, to condemn the lands necessary for the erection of proper dams. This act's validity was assailed upon the ground that the legislature had attempted to delegate an exclusively legislative function to the district court; but the court upheld the statute, in *McGee* v. *Board of Commiss.*, 88 N. W. 6.

EQUITABLE ASSIGNMENT.

Attorney's Fees

The question of what constitutes an equitable assignment is considered by the Supreme Court of Nebraska in *Phillips* v. *Hogue*, 88 N. W. 180, and they refuse to recognize the lien of an attorney where his client had, by a verbal promise, agreed to pay him out of a certain fund. The case is in accord with the decision in *Christmas* v. *Russell*, 14 Wall. 69.

EVIDENCE.

Release Receipt

In the case of *Vaughan* v. *Mason*, 50 Atl. R. 390, the defendant set up, as a defence to an action for damages, a parol receipt which stated that the amount received was in full settlement. The plaintiff offered parol evidence to vary the writing, and his offer was accepted; but the Supreme Court of Rhode Island, while admitting that a simple receipt could be varied by parol, held that here there was an agreement between the two parties. The lower court was, therefore, reversed. *Squires* v. *Amherst*, 145 Mass. 192, supports this decision.

Criminal Law, Evidence of Other Crimes

In *Peo.* v. *Henry* (Mich.), 88 N. W. 77, the defendant had been indicted for breaking into a saloon with intent to commit larceny. The breaking was admitted, but the defence was made that the prisoner was intoxicated and had no felonious intent. The trial court admitted evidence of two former convictions of larceny, for the purpose of showing the intent. This was held error, because, in this case, intent was the gist of the crime; and to admit the evidence offered,

EVIDENCE (Continued).

would be to prove the commission of one crime from evidence of other crimes. The court cites *Swan* v. *Com.,* 104 Pa. 218, but the facts are not parallel.

INFANTS.

In *Lowery* v. *Cate,* 64 S. W. 1068, the action was one in tort against a minor for so negligently operating an engine, that wheat belonging to the plaintiffs was set afire and burnt. The plaintiffs had contracted with the defendant to thresh their wheat; and the Supreme Court of Tennessee held that while this was technically tort it was really an action for the negligent performance of a contract upon which the defendant was not liable.

Liability for Contract

The next friend of several infants employed an attorney to secure a decree for the sale of some lands belonging to and inherited by the infants. After the sale had been ratified it was discovered that the decedent's personalty was insufficient to pay his debts, and the creditors were paid out of the proceeds of the sale—making the proceeding a creditor's suit rather than a partition sale. From the surplus, the attorney's fee was paid, but the auditor disallowed the credit. The Maryland Court of Appeals, in *Senseney* v. *Repp,* 50 Atl. R. 416, reversed the order, on the ground that the attorney had rendered services to the infants, and if unpaid out of the fund, would not be compensated at all.

Sale of Land, Attorney's Compensation

INNKEEPER.

The New Jersey Court of Appeals deals with an interesting question regarding the liability of innkeepers in *Livery Co.* v. *Snook,* 50 Atl. R. 358. The defendant had an open shed for the accommodation of guests' teams. The plaintiff's servant tied his team, without specifically calling the defendant's attention to the fact or placing them in the custody of a hostler. As they were stolen, the plaintiff attempted to hold the innkeeper; but the court affirmed the non-suit because there was no sufficient placing in the innkeeper's custody. Magie, Ch. dissents. The court distinguishes the case from *Mason* v. *Thompson,* 9 Pick. (Mass.) 280.

Liability, Care of Horses

INSANITY.

In *State* v. *Knight,* 50 Atl. R. 276, there was an attempt to have the Supreme Court of Maine break away from the rule for legal insanity as laid down in *McNaghten's Case,* 10 Cl. & F. 200, and add to the test of whether the accused could distinguish between right and wrong the further question as to whether he could choose the right. The court refused to break away from the settled doctrine on the ground that it has proved adequate and satisfactory. *Parsons* v. *State,* 81 Ala. 577, is one of the few cases accepting irresistible impulse as a defence.

Murder, Uncontrollable Impulse

INSURANCE.

In *Miller* v. *Ins. Co.,* 111 Fed. R. 465, Boyd, J., held a local agent's representation that an applicant was insured after paying the first premium, even before the acceptance of the application by the company, was not binding upon the defendant. Here the application stated that none of the agent's statements would bind the company unless reduced to writing and accepted by the company.

Life Insurance

A company issued a policy to their medical examiner, who had agreed with their agent that the latter should pay the first premium and reimburse himself from the fees due the doctor. When the medical examiner died, no premium had been paid, and the New York Supreme Court, in *Hewitt* v. *Ins Co.,* 73 N. Y. Supp. 105, held that the widow could not recover, as there was no evidence of any extension of time for payment of the premium or that the agent made the promise as the agent of the company.

Payment of Premium

Exactly what contingencies are covered by a policy agreeing to insure "against liability to employes of the insured for accidents," was raised in *Cornell* v. *Travelers' Ins. Co.,* 73 N. Y. Supp. 341. The plaintiff was erecting structural steel in a new building, when a fall of the girders—due to no fault of his—killed some workmen. Being sued, he called upon the insurance company to defend, which they refused to do. He thereupon successfully defended; and now seeks to recover the costs of his suit. The court holds that the policy was to indemnify the plaintiff

Employer's Indemnity

INSURANCE (Continued).

against any expenses which he might sustain by reason of such claims being made. This would lay a heavy burden upon the insurer. It is, however, in accord with *Hoven* v. *Assurance Corp.*, 93 Wis. 201. The opinion is dissented from by Ingraham, J.

MORTGAGES.

Assumption by Grantee, Principal Surety

A. purchased property and gave his bond and mortgage to secure the purchase price. Later, selling to B., A. takes an agreement from B. to assume the obligation, but this agreement did not appear in the deed. A subsequent holder executes a second mortgage. The first mortgagee securing judgment against A. in an action to foreclose, the holder of the second mortgage pays the judgment and has it assigned to him. He now proceeds to apply the profits of the land to the satisfaction of the second lien—still claiming the right to hold A. for any deficiency in the value of the land. A. contends that B. is the principal debtor upon the bond, and he, himself, is a surety and as such may pay the debt and take the creditor's security—the first mortgage. The New York Supreme Court in *Howard* v. *Robbins*, 73 N. Y. Supp. 172, takes the view of the original mortgagor, A., although McLennan and Adams, JJ., dissent upon the ground that A. was the principal debtor.

MUNICIPAL CORPORATIONS.

Limitation of Indebtedness

There is in the Iowa Constitution a provision that no municipality shall be allowed to contract debts beyond a certain limit in any manner or for any purpose. There was a gross over-issue by a school district and the plaintiffs tried to evade the provision of the Constitution on the ground that the bonds, upon their face, recited they were not issued in contravention of that provision. Shiras, J., in *Fairfield* v. *School Dist.*, 111 Fed. R. 453 (N. D. Iowa), held the issue was void—that regardless of recitals, the purchaser was bound to take notice of the actual facts. The case is distinguished from *Gunnison* v. *Rollins*, 173 U. S. 255, on the ground of the peculiar wording of the Colorado statute in that case.

MUNICIPAL CORPORATIONS (Continued).

Tax Sales, Prior Assessments

The plaintiff in *Bell* v. *City of New York,* 73 N. Y. Supp. 298, had purchased a piece of ground at a tax sale, under an act providing that such sale should be a bar to all persons interested in the land. It was held that this did not discharge the lien against the land of unpaid assessments for local improvements.

NATIONAL BANKS.

Embezzlement, Intent as Element

According to the decision of the Circuit Court of Appeals, Sixth Circuit, in *McKnight* v. *U. S.,* 111 Fed. R. 735, where a national bank officer is indicted for embezzlement under § 5209 of the Revised Statutes, the prosecution must prove that the offence was committed with intent to defraud the bank. Although the indictment made these averments, yet as the judge had refused to charge that the prisoner could not be convicted unless the fraudulent intent against the bank were found, the case was reversed. This decision is rested upon *U. S.* v. *Britton,* 107 U. S. 655.

NEGOTIABLE INSTRUMENTS.

Accommodation Paper, Usurious Discount

The New York Supreme Court, Appellate Division, in the case of *Strickland* v. *Henry,* 73 N. Y. Supp. 12, holds that any person discounting an accommodation note and reserving more than the legal interest will be guilty of usury. They treat the transaction as a loan and not a sale. The authorities on this point are discussed in *Claflin* v. *Boorum,* 122 N. Y. 385.

QUIETING TITLE.

Limitations

In *Batty* v. *Hastings,* 88 N. W. 139, the question arose as to when an action to remove cloud upon title would be barred; and the Supreme Court of Nebraska decided that, while a cause of action clearly accrues to the owner of real property in possession thereof whenever a cloud upon his title is created, the cause of action is a continuing one and is available as long as the cloud remains. They adopt the view of the New York Court in *Miner* v. *Beekman,* 50 N. Y. 337, that the cause of action is not the creation of the cloud, but its existence.

QUIETING TITLE (Continued).

In *Dewing* v. *Woods,* 111 Fed. 575, the Circuit Court of Appeals, Fourth Circuit, decided that the claimant of land, which has been sold for back taxes and purchased by the State, cannot maintain a bill to remove the cloud upon his title. In this, the court follows *Frost* v. *Spitley,* 121 U. S. 552, where it was held that the holder of an equitable title, not in possession, could not maintain a bill. Here the question of possession is not discussed—the court stating it was immaterial as the plaintiff did not have the legal title.

Title of Plaintiff

RAILROADS.

A was working, in the employ of the B. Co., upon the premises of the C. R. R. Co. The latter allowed A. and his fellow-workmen to use a hand-car in going and coming from their work. The hand-car was run down through the negligence of Co.'s servants. The defendant demurred and his demurrer was sustained in the lower court, but in *Reynolds* v. *Mink,* 111 Fed. R. 692, the Circuit Court of Appeals reversed the lower court.

Employee of Third Party, Injury

The A. Railroad Company had allowed the employes of a pottery company to use a path along the track. The plaintiff testified that he was an employe and was on his way to the station to meet a friend, coming in on a train, when he was hit by a flying brake-shoe and injured. In *R. R.* v. *Martin,* 111 Fed. 586, Dallas, J., held that the plaintiff was at best a licensee, and could not recover for an injury of this nature. Cf. *Gillis* v. *R. R.,* 59 Pa. 143.

Use of Footpath, License

STATUTE OF FRAUDS.

A.'s creditor B. desired additional security, and C. became such surety in consideration of the promise of A.'s father, D., to reimburse him if he were compelled to pay. The New Jersey Court of Errors and Appeals, in *Hartley* v. *Sandford,* 50 Atl. R. 454, decided that the father could not be held upon his parol promise—the case coming within the Statute of Frauds. They distinguish the case where the promisor is also a signer of the bond (*Thomas* v. *Cook,* 8 Barn. & C. 728), and where there is a new consideration beneficial to the promisor

Promise to Indemnify Surety

STATUTE OF FRAUDS (Continued.)

(*Tighe* v. *Morrison,* 116 N. Y. 263): but say there is good authority for holding that an undertaking to indemnify a person for becoming surety for another is, in the absence of any modifying fact, a promise within the statute. (*Green* v. *Creswell,* 10 Adol. & E. 453.)

TAX TITLE.

Rights in Land

The Supreme Court of New Jersey has decided that, where a person is possessed of a term of years in a property under a tax sale, he has no right to fell timber. *Brewer* v. *Ireland,* 50 Atl. 437.

TRUSTS.

Investments

By § 4706, Kentucky Statutes, a trustee may not invest in the bonds of any railroad which has not been in operation for at least ten years. In the case of *Aydelott* v. *Breeding,* 64 S. W. 916, the trustee had entered upon his duties as trustee before the statute was enacted, and the question was whether, since he had acted as a prudent business man, he should be held for the loss occasioned by an investment made contrary to the statute. The Kentucky Court of Appeals held him accountable.

Identification of Funds

In the case of *Elizalde* v. *Graves,* 66 Pac. 368, the question before the Supreme Court of California was whether an administrator can be held a trustee where he receives funds that the intestate had held as trustee but had mingled with his own funds. The court cites Lewin 875 and arrives at the decision that so long as the amount in the fund is greater than the amount of the trust-fund it will, in the absence of any showing to the contrary, be presumed to be that held in trust.

WILLS.

Conversion of Real into Personal Estate

The testator, in *Canfield* v. *Canfield,* 50 Atl. R. 471, had directed that his land be sold, after the death of his wife, and the money divided among the residuary legatees. One of the legatees having died before the testator, the question was whether this share should be treated as personalty or realty. The New Jersey Court of Chancery held that as the purpose of

WILLS (Continued.)

the conversion from realty into personalty had failed, they would treat the share as realty. This decision is based upon the case of *Ackroyd* v. *Smithson,* 1 White & T. Lead. Cas. Eq. 690.

Revocation by Adoption of Child

In *Glascott* v. *Bragg,* 87 N. W. 853, the Supreme Court of Wisconsin had presented to it the question whether a man's previous will was revoked by the adoption of a child. The father had taken out a life insurance policy in the son's favor and this had been paid. The court, however, stating that the law was settled that the birth of a child was not only evidence of revocation, but was a revocation, concerned itself with the question whether an adopted child came under the same rule; and, as the Wisconsin statute says they shall have all the legal rights of a natural child, except the right to take property expressly limited to the heirs of the body, they must be regarded as natural children as to the revocation of wills. The decision is in accord with *Hilpire* v. *Claude,* 109 Ia. 159.

Designation of Charitable Use

The Court of Chancery of New Jersey holds in *American Bible Society* v. *American Tract Society,* 50 Atl. 67, that a devise to an unincorporated charitable society, without further specification of purpose, is not void under the statute of frauds, because not complying with the requirement that all declarations and creations of trust or confidence shall be manifested in the will, since the by-laws of the society, expressing its objects and purposes, are themselves a sufficient designation of the conditions and purposes of the devise. This would constitute, apparently, an incorporation by implied reference.